

REMARKS

This is in response to the 07 October 2010 office action.

Withdrawn and Canceled Claims.

Withdrawn claims 1-23 remain canceled without prejudice or disclaimer of the subject matter therein. Claims 35 and 37 also remain withdrawn without prejudice or disclaimer of the subject matter therein and claims 35 and 37 are canceled. Applicant reserves the right to file a continuing application including the subject matter of the canceled claims and the withdrawn claims.

Allowable Claims.

Claims 24-28 and 32-34 are objected to as dependent on a rejected claim and indicated as allowable if placed in independent form. Claims 24 and 32 have been amended to be in independent form with the remaining claims being dependent (directly or indirectly) from one of independent claims 24 and 32.

The 35 U.S.C. 112 rejection.

Claims 38-39 are rejected for the use of a trade name. These claims have been amended to remove the trade name and to depend from allowable independent claims 24 and 32, respectively.

The 35 U.S.C. 101 rejection.

Claim 29 is rejected under 35 U.S.C. 101 as non-statutory. The office action has suggested the claim be amended to recite "wherein the hollow cap is adapted to encapsulate substantially all of the bone instrumentation which projects from the bone" and this amendment has been made. Claim 29 has been amended to depend from allowable claim 24.

The 35 U.S.C. 102(b) rejection over Jennings Jr. et al.

Claims 23, 29-30, 36 and 38-42 are rejected as anticipated by Jennings Jr. et al. (U.S. Patent No. 6,810,880). The rejected claims are canceled or amended to depend from one of the allowable claims.

The 35 U.S.C. 103 rejections.

Claim 31 is rejected as obvious over Jennings Jr. et al. in view of Ellman (U.S. Patent 4,428,375). This rejected claim is canceled.

Claims 43-45 are rejected as obvious over Jennings Jr. et al. in view of Barron (U.S. Patent Publication No. 2003/0163161). The rejected claims are canceled or amended to depend from one of the allowable claims.

Conclusion.

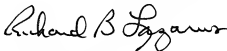
For all of the above reasons claims 24-29, 32-34,38-39 and 45 appear to be in condition for allowance and such is respectfully requested.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 02-1010 (6714-46501).

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in dark ink, appearing to read "Richard B. Lazarus". The signature is fluid and cursive, with the first name "Richard" and last name "Lazarus" clearly distinguishable.

Richard B. Lazarus

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